IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1083 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANBHAI SHANKARBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR BY MANKAD, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/09/1999

ORAL JUDGEMENT

The appellant is the original accused No.2 of Sessions Case No. 121 of 1996, tried by the learned Additional Sessions Judge, Bharuch. Present appellant alongwith one Rajendrakumar Shyamsundar Acharia, resident of Ankleshwar was chargesheeted for the offences punishable under sections 8(C), 21, 22, 23 and 29 of the Narcotic Drugs & Psychotropic Substance Act, 1985, (hereinafter referred to as `Narcotic Act') in connection

with the offence registered with Ankleshwar Police Station being C.R. No.27 of 1996.

2. According to the prosecution, the police received an information to the effect that Rajendrakumar Shyamsundar Acharia, resident of Ankleshwar (original accused No.1) is dealing with ganja and he used to store and sell the same at and from his residence which is in the near vicinity of the police station of town Ankleshwar. P.I. Mr.N.V. Kathirya, who was at relevant point of time was Police Inspector, Task Force, Bharuch, alongwith other police personnels raided the residential premises of original accused No.1, after undergoing formalities and taking two panchas with them. When the house of original accused No.1 was raided, the present appellant was also present in that very house. During the raid, police recovered ganja in large quantity kept in one airbag and when weighed, same was more than 5 k.g. According to the prosecution, two samples were drawn and sealed in presence of panchas and were sent to the Forensic Science Laboratory for proper examination, but, the police was prima facie of the view that the material found from the airbag at the residence of the original accused No.1 was ganja. The prima facie opinion of the police was confirmed by the F.S.L. On receipt of the report from the FSL, the police chargesheeted both the accused and they were tried by the learned Additional Sessions Judge at Bharuch. After appreciating the evidence led by the prosecution, the learned Additional Sessions Judge convicted both the accused for the offences punishable under sec.20(b)(i) read with sec.8(C) of the Narcotic Act. It is not a matter of dispute that the house raided is owned and possessed by original accused No.1 and none of the accused was holding permit to possess the prohibited psychotropic substance ganja. After going through the entire set of judgment, in connection with the fact that the information received by the police before raiding the premises of the accused No.1, qua accused No.1 a query was raised to the learned APP in this regard who was assisting the court and was submitting to confirm the conviction recorded by the learned Additional Sessions Judge. He has fairly submitted that the police had received information against accused No.1 only and there is no evidence on record under which it can be said or inferred that accused No.2 was dealing in ganja independently of the accused No.1 whose house was raided. The learned Additional Sessions Judge, at the time of appreciating the evidence led by the prosecution, has considered the explanation given by both the accused when their statements under section 313 under the Code of Criminal

Procedure were recorded, but, the same ought to have been considered in its proper perspective. The basic principle is that prosecution should prove all the charges beyond doubt. In my opinion, presence of accused No.2 at the residence of the original accused No.1 was the only circumstance against him. It seems that as he was found with accused No.1 at his residence he was arrested and brought before the court for trial, though his name was not referred in the Batmi received by police. Even for the sake of argument, the case of the prosecution is accepted that at the time of raid, the present appellant was with accused No.1 at his residence, it would not be legal to presume that he was in the house in connection with the ganja lying in the house. He might be with the original accused No.1 in connection with the ganja but there is ample scope that his presence might be an innocent presence. How and why accused No.2 is connected with the muddamal from the residence of the accused No.1 is not properly answered by the prosecution. The circumstance on which the prosecution relies must be convincing and must be inconsistent with the innocence presence of the accused. The present of the appellant at the residence of the original accused No.1 cannot be said to be a circumstance inconsistent to his innocence. The quality of evidence available on record is not sufficient against accused No.2 but the same is hazzy and cloudy, and the learned Additional Sessions Judge ought to have considered as to whether accused No.2 deserves any benefit of doubt. Plain reading of the judgment indicates that the learned Additional Sessions Judge has not applied her mind to this aspect, otherwise the same could have been replied in proper perspective. The possibility of being innocent so far as appellant is concerned was very well there and it is not the finding of the learned Sessions Judge that such possibility is ruled out by the cogent and convincing evidence.

3. The learned APP Mr. Mankad, during the course of his submission has fairly admitted that the learned Additional Sessions Judge had an opportunity to acquit this accused by giving a benefit of doubt as there was no independent information (Batmi) against present appellant and his presence at the residence of the original accused No.1 was not a circumstance which can be said to be inconsistent to his innocence. Therefore, appeal requires to be allowed. I am told that accused No.1 has not preferred any appeal. It is unfortunate that this court is dealing with this appeal after a pretty long time especially when the accused has remained in jail for a period which is atleast 2/3rd of the imprisonment imposed on him. The fine if any paid, requires to be

refunded to him.

4. In view of the above observation, the appeal is allowed. The appellant-accused is given benefit of doubt and therefore he is acquitted of the offences punishable under secs.8(C), 20(b)(i) of the Narcotic Act. The impugned judgment and order passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.121 of 1996 dated 18.9.97 in respect of appellant-accused is hereby quashed and set aside. The appellant-accused Chimanbhai Shankarbhai Thakkar is acquitted for the charges levelled against him and he be set at liberty forthwith if not required in any other case. Fine, if any paid, be refunded back to the appellant-accused. Rule is made absolute.

Yadi be sent to the Central Jail Sabarmati or to the Jail where appellant-accused is confined.

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